

approval of DORIBAX represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DORIBAX is 1,746 days. Of this time, 1,442 days occurred during the testing phase of the regulatory review period, while 304 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* January 2, 2003. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 2, 2003.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 13, 2006. The applicant claims December 12, 2006, as the date the new drug application (NDA) for DORIBAX (NDA 22-106) was initially submitted. However, FDA records indicate that NDA 22-106 was submitted on December 13, 2006.

3. *The date the application was approved:* October 12, 2007. FDA has verified the applicant's claim that NDA 22-106 was approved on October 12, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,025 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 3, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 3, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted,

except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-E-0056]

Determination of Regulatory Review Period for Purposes of Patent Extension; BANZEL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BANZEL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period

forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product BANZEL (rufinamide). BANZEL is indicated for adjunctive treatment of seizures associated with Lennox-Gastaut syndrome in children 4 years and older and adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for BANZEL (U.S. Patent No. 6,740,669) from Novartis AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 26, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of BANZEL represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BANZEL is 6,595 days. Of this time, 5,501 days occurred during the testing phase of the regulatory review period, while 1,094 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* October 27, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 27, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* November 17, 2005. FDA has verified the applicant's claim that the new drug application (NDA) 21-911 for BANZEL was initially submitted on November 17, 2005.

3. *The date the application was approved:* November 14, 2008. FDA has verified the applicant's claim that NDA 21-911 was approved on November 14, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 819 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 3, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 3, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-E-0568]

Determination of Regulatory Review Period for Purposes of Patent Extension; TALENT ABDOMINAL STENT GRAFT SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TALENT ABDOMINAL STENT GRAFT SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a

regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device, TALENT ABDOMINAL STENT GRAFT SYSTEM. The TALENT ABDOMINAL STENT GRAFT SYSTEM is indicated for the endovascular treatment of abdominal aortic aneurysms with or without iliac involvement having: Iliac/femoral access vessel morphology that is compatible with vascular access techniques, devices, and/or accessories; a proximal aortic neck length of ≥ 10 millimeters (mm); proximal aortic neck angulation $\leq 60^\circ$ distal iliac artery fixation length of ≥ 15 mm; an aortic neck diameter of 18 to 32 mm and iliac artery diameters of 8 to 22 mm; and vessel morphology suitable for endovascular repair. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TALENT ABDOMINAL STENT GRAFT SYSTEM (U.S. Patent No. 6,306,141) from Medtronic, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 18, 2009, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of TALENT ABDOMINAL STENT GRAFT SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TALENT ABDOMINAL STENT GRAFT SYSTEM is 4,024 days. Of this time, 3,843 days occurred during the testing phase of the regulatory review period, while 181 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective:* April 11, 1997. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section